

Insurance Department

State of Utah Title & Escrow Commission Meeting Meeting Information

GARY R. HERBERT Governor SPENCER J. COX Lieutenant Governor TODD E. KISER Commissioner

<u>Date:</u> June 12, 2017 <u>Time:</u> 9AM <u>Place:</u> East Building, Copper Room

MEMBERS

COMMISSION MEMBERS

xChair, David Moore (Agency, Salt Lake County) xVice Chair, Bob Rice (Insurer, Ada County, ID) Sylvia Andersen (Public Member, Salt Lake County) xMatthew Jagerson (Agency, Utah County) xJeff Wiener (Insurer, Salt Lake County)

DEPARTMENT STAFF

xTodd Kiser, *Ins. Commissioner* xSuzette Green-Wright, *MC Dir.* xAngie Watson, *Examiner*

Brett Barratt, *Deputy Comm*. xRandy Overstreet, *Licensing Dir*. xAdam Martin, *Examiner* Perri Babalis, *AG Counsel - TEC* Reed Stringham, *AG Counsel - UID* xSteve Gooch, *PIO Recorder*

PUBLIC

Carol Yamamoto Matt Sager Adam Back Kirk Smith [PHONE] Tim A. Krueger
Tim Grubb
Wes Jensen [PHONE]
Matt Ryden [PHONE]

James Swan Tyrone Johnson [PHONE] Joseph McPhie [PHONE]

Blake Heiner

MINUTES — Approved

General Session: (Open to the Public)

- Welcome / David Moore, Chair (9:01 AM)
 - Sylvia Andersen is excused.
 - o Lisa Watts Baskin, Brett Barratt, and Perri Babalis are excused.
- Telephone Roll Call
- Adopt Minutes of Previous Meeting
 - o Motion by Jeff to adopt minutes. Seconded by Bob. Motion passes 4-0.
- Reports
 - o Concur with Licensee Report / Angie
 - There are no lapsed or reinstated agency licenses. There is 1 new agency license.
 - There are several new individual licenses and lapsed licenses. There were 2 reinstated licenses.
 - o Concur with Complaint & Enforcement Report / Suzette
 - Ended the month with 3 open investigations that were opened in May and are still open. Several were opened and closed in May. There were 10 new investigations opened in May, and 19 that were closed.
 - Motion by Jeff to concur with both reports. Seconded by Bob. Motion passes 4-0.
 - o Request for Dual Licensee Expedited Request: None
 - o Request for Attorney Exemption: None
- Administrative Proceedings Action / Lisa Watts Baskin, ALJ
 - o Stipulation and Order: None
 - o Order to Show Cause: None
 - o Informal Adjudicative Proceeding and Order: None
 - Notice of Formal Adjudicative Proceeding: None

• Board Duties & Responsibilities / Perri

New Business

- o Discuss 31A-23a-406(1)(g) / Jeff
 - Jeff notes that this goes back a couple of months. There was prior discussion about having an office, staff who can do escrow, and line of authority here, but nothing is currently active. This may just be calling people to attention that (1)(g) is currently the law.
 - David says the discussion had to with the idea that to have a license, you have to have brick and mortar, but the work doesn't have to be done in that office.
- o Notary Office lookup tool / Angie
 - Angie has been working with the Notary Office on a tool on their website that can be used to lookup notaries who are also escrow officers. We're in the process of approving a letter that will be emailed to all title people to notify them of it.
 - David thinks it's a great idea. He also notes that the notice regarding active/authorized status on the Agent Search tool looks really good. He commends the department on the way it was done.

Old Business

- O Discuss DRE purchase contract addendum and draft version of R592-xx / Angie
 - The Department of Real Estate moved forward with the addendum. If the Title & Escrow Commission would like to create a rule, they can.
- o AG opinion on whether a title agency holding earnest money is allowable / Commissioner Kiser
 - The Attorney General's Office offered an opinion that the Utah Insurance Code 31A-23a-406 authorizes title insurance producers to do escrow involving real property transactions if certain conditions are met. The Insurance Code authorizes a title insurance producer to hold earnest money in real estate transactions if a title insurance policy is issued.
 - Commissioner Kiser says in his experience, he would prefer a Realtor to hold the money because
 as soon as the money transfers to someone else, the person holding the money isn't vested in his
 interest.
 - David says one of the questions is what happens if the deal doesn't go through then they're
 holding money but no policy is written. Angie and Commissioner Kiser say the discussion around
 it was the intent: You wouldn't accept the money with the knowledge that you're not going to
 close a transaction.
 - Jeff says as far as the REPC goes, there's an addendum now and he doesn't see any issue with it. He thinks the key is that the title industry created a form that wasn't put in front of the DRE, so the lesson learned is to have more open discussion about things.
 - Carol asks what happens if an agent collects the earnest money with the intent that the transaction go through, but it doesn't. She has a situation now where the deal has failed, and there's a dispute between the agents, and Carol's company is holding the earnest money. Jeff says the REPC is instruction for the transaction, and it requires mutual instruction for what to do with the money. She has to hold the earnest money until mutual instructions are received. Jeff thinks there is probably an addendum regarding the termination of contract as well.
 - Jeff says this is similar to a past situation where the title industry created a form for receiving money, but didn't talk to the DRE. If the issue is with their form and their instruction, the Title & Escrow Commission should seek clarification as to termination of the REPC and clarification about what to do with the money. He doesn't know that the Title & Escrow Commission needs to create a form or rule regarding the escrow instruction.
 - Blake Heiner says the problem with the REPC is that it says nothing about disputes with regard to earnest money. It doesn't say the holder of the earnest money is entitled to hold or interplead the money in the event of a dispute. The REPC doesn't address it at all. He notes that there was discussion about having a subcommittee address a rule. Does the commission still have an appetite for that? David's attitude is that a rule may be necessary to address the situation. He doesn't think there should be a form or escrow instructions. Do we need a rule for something that happens 2% of the time? Blake thinks that based on the conversation from last month, the

- industry is interested in having backup from the commission to be able to tell their customers that they need this additional document signed if the customer wants them to hold earnest money.
- Jeff asks what happens if we have the Utah REPC that discusses holding earnest money, but it's not always going to be a Utah REPC. If the instructions are insufficient, it might be nice to have a rule. He says that in Idaho there's a statute that says if the contract is lacking, the earnest money holder has a duty to interplead it. If the contract is silent regarding a point, it gives the commission an action to take. He would like to see the REPC address those issues.
- Bob's concern with a rule is whether the industry wants a rule or whether it just adds another burden to comply with. Blake says his sense from the last meeting is that the industry would like a rule. It gives agents some defense about holding earnest money.
- Jeff asks what the nature of the DRE committee is. Angie says that's over and the DRE decided to move forward. She says they didn't take her input very seriously.
- David likes the idea of a rule, but that the commission shouldn't have to come up with the
 instructions. He notes that agents have to charge for their work and disputes get expensive.
- Jeff says if a subcommittee is formed, it would behoove the commission to involve the DRE in it. David asks Angie to approach the DRE about concerns with the REPC and to suggest a joint committee. Angie feels like the committee that was in place didn't solve the problem on the title side, although it did on the real estate side. Carol says it's important to have both sides involved because they're both working off the same REPC. She feels like the title community has taken on more and more liability from the real estate community over the years. Blake says it's OK to involve the DRE, but thinks the Title & Escrow Commission can promulgate its own rule and the DRE can submit comment like any other member of the public.
- David will move the subcommittee forward composed of himself, Blake and Mark Webber. Jeff
 notes that subcommittee meetings are public, and this is more of a steering committee with
 members of the industry discussing ideas. He suggests adding a draft version to the July agenda.
- "Draft version of R592-xx / David" added to the July agenda.
- Update on commissioner terms / Steve
 - Three people have been recommended to the Senate by Governor Herbert:
 - Alison McCoy
 - Nancy Frandsen
 - James Swan
 - The Senate is scheduled to meet on June 21 for approvals.
 - Commissioner Kiser thanks Matthew, Jeff and Bob for their service.

• Other Business

- Exam review / Randy
 - PSI will be having an exam review committee meeting on August 14-15. The title portion will be on August 15. Statute says a member of the board must attend those meetings (other than David, because he is a test provider). The commission can choose its attendee in July. Jeff says he can commit to attend if necessary. Jeff suggests asking the new title commissioners to find out if they can attend.
- o Chase Phillips asks what the discussion on 31A-23a-406(1)(g) regarded.
 - David says there wasn't much discussion. He doesn't think there's anything that precludes work being done outside the office, but there has to be an office in the state and it has to be staffed, as is set forth in the statute.
 - Chase asks what if a policy is issued inside Utah, but the escrow doesn't happen in Utah and they're licensed in escrow in another state. Bob says the question being asked is if escrow is done in violation of Utah's escrow statutes and he does the title only portion, can he get in trouble if the escrow is done illegally. Angie says this is what 406 speaks to. Bob says there's the escrow portion and the title portion of a transaction. Jeff says if you're escrow only, and you don't do title

- in Utah, then would that even be regulated by the Insurance Department? Angie says no, it's Finance.
- Jeff asks if you have a title entity that issues a title policy, but the third party doing the transaction is in violation of a Utah law, is it the responsibility of the title agent to know the status of everyone they do business with? Jeff thinks if someone requests title insurance from a licensed title agency and you issue that policy, you can't look to the acts of the other entity for violations.
- Chase asks a question that David clarifies: If a national lender has a contract with a title company in another state to do their escrow, and they call Chase to ask him to provide title insurance, is it a violation to have escrow involving Utah property and Utah people done outside of Utah? Does that need to be closed by a Utah escrow agent? Angie says we've seen that a lot and it depends on if it's a title company or an escrow company.
- Jeff says the law is very clear, and so is escrow. He's not familiar with hour the Department of Financial Institutions licenses escrow, but if the agent isn't performing escrow under a title license, then they would have to meet DFI's qualification.
- David notes that national companies have to get something signed locally. If the notary is
 licensed that's great, but if they're just a notary they can't sign closing documents without an
 escrow license. We need to make sure that people doing closings in the state are licensed.
- "Escrow agent" is a defined term in R592-1-301(61). Jeff says the way it's worded, the escrow agent is the agency, not the individual. If the agent is acting under the UID, they have a person in the office but the escrow agent is the agency, which is what's on the closing disclosure form. Settlement statements aren't executed by an individual. With a designated home state license, they could be anywhere. Chase says the department is interpreting that the escrow agent is an individual, not the agency. However, 31A-23a-103 says a producer with a title escrow line of authority must be licensed and can't use the services of an unlicensed entity.
- Bob says 31A-23a-103 says a person may not utilize the services of another if they know they're not licensed. If you're a title agency and someone chooses to use an unlicensed escrow provider from someplace else, and you later provide title insurance policy to the lender, the title company didn't utilize the services of an unlicensed person somebody else did the agency is just providing an unrelated service. However, if Chase got the whole deal and hired an unlicensed escrow person to do the escrow portion, that's another matter.
- Jeff thinks this needs to be cleaned up legislatively. Licensees can have designated home state licenses and can conduct escrow properly under 31A-23a-406.5, but 31A-23a-406(1)(g) seems to imply that the person staffing the office must be the one who processes the escrow, which seems contradictory. He thinks it could be fixed in the next legislative session by striking "who processes the escrow." The intent is having someone who is physically in the Utah office, but if the escrow if processed someone licensed in another state, that's the nature of business.
- Bob thinks a distinction needs to be made whether Utah agencies regulate the escrow activities of a completely out-of-state company. Jeff thinks for consumer protection, if the property is located in Utah then the licensing rules under 406.5 should apply even to out-of-state companies.
- Jeff thinks the Department should opine on "who processes the escrow" in 406(1)(g) do they really need to be in the office, or can they be in other states?
- Joseph McPhie would also like to make sure that we comply with 409, which states that money will be held within the state. If documents are the escrow, that's one thing, but if money is the escrow, that's another.
- Commissioner Kiser says the Department welcomes discussion of legislative changes when the Department's legal team is available.
- Jeff suggests putting together a discussion about a proposed rule change/addition and statute change. He suggests that the chair meet with Brett, Perri and Reed.
- Angie says that notices were sent to agencies that didn't file their annual and controlled business reports.

• Hot Topics

Executive Session (None)

- **Adjourn** (10:28 AM)
 - o Motion by Jeff to adjourn. Seconded by Matthew. Motion passes 4-0.
- Next Meeting: July 10, 2017 Copper Room

2017 Meeting Schedule in Copper Room

Jan 9	Feb 13 (SOB B110)	Mar 13	Apr 3	May 8	Jun 12
Jul 10	Aug 14	Sept 11	Oct 2	Nov 13	Dec 11